Office-Supreme Court, U.S.
FILED
MAR 14 1966
JOHN F. DAVIS, CLERK

No. 961

In the
Supreme Court of the United States
OCTOBER TERM, 1965.

HENRY F. BELL,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF FOR PETITIONER.

C. ALLEN HIGH
Stahlman Building
Nashville, Tennessee 37201

EDWARD B. HENSLEE, JR.
FRANCIS H. MONEK
120 West Madison Street
Chicago, Illinois 60602

WILLIAM J. HARTE
111 West Washington Street
Chicago, Illinois 60602
Counsel for Petitioner.

The Scheffer Press, Inc.—ANdover 3-6850

INDEX

PAGE

ARGUMENT.

1. Compelling petitioner to testify before the grand jury 1
2. Unfair publicity 2
3. The double standard favoring the Government .. 3
4. Grand jury minutes 5

CITATIONS.

Gordon v. State, 140 Ala. 29, 39 So. 1009, 1012 (1904) 4

In re Bartos, 13 F. 2d 138, 143 (1926) 4

State v. Smith, 125 Mo. 2, 7 (1894) 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. 961

HENRY F. BELL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF FOR PETITIONER.

---

1. Compelling petitioner to testify before the grand jury.

Petitioner will not reply to respondent's description as baseless petitioner's complaint that he was a *de facto* defendant at the time of his grand jury testimony. The record will dispel that notion. What is more disturbing is respondent's bare-faced insistence on the right to compel "potential defendants" who are the "subject of the investigation" or "accused of [the] crime" to testify before the grand jury. It is said the grand jury would be "denuded . . . . of a substantial right of inquiry." Being advised of one's right to counsel and the right not to incriminate

oneself is supposed to eliminate any oppression (Res. Br. 8-9).

But what about the accused? He is not advised he is the "potential" or actual defendant. He either incriminates himself by answering or remains silent by pleading his privilege, is ordered by the court to answer certain questions, suffers the adverse inference from his plea unaided by a contrary instruction by the court, and is indicted. This opprobrious practice so popular among Government counsel should be condemned.

2. Unfair publicity.

The Government's answer to petitioner's being forced to trial three days after the conviction of another defendant and thirty days after Hoffa and his group is that the point is "without substance." The Court of Appeals, in at least an honest appraisal of petitioner's predicament, recognized petitioner could not be disassociated from Hoffa and asked how long petitioner expected the case to be continued: "One month? Three months? Six months? A year?" (Pet. App. a, 14a). Petitioner simply asked and now asks: (1) why just three days later; (2) why just three days later in the same city; (3) why just three days later in the same court room? The Government supplied no answer except to comment on the wide latitude given petitioner's counsel on *voir dire*. Petitioner submits the *voir dire* under those circumstances is like giving a convicted murderer wide latitude in examining the clemency board composed of the murdered man's relatives. In short, the *voir dire* is no answer.

3. Fair trial — the double standard favoring the Government.

The Government, either by design or oversight, denies the actual contradictory rulings made by the trial court on precisely the same issue. So that the court is apprised of the actual rulings, petitioner respectfully repeats them here. As to the convictions of the Government's only incriminatory witness, Bellamy:

> "The Court: Mr. High, before we proceed let me advise that the court will permit you to ask the witness or any subsequent witness for impeaching purposes questions about any convictions of felonies and with that exception, why—
>
> Mr. High: (Interposing) Is Your Honor limiting it to felonies?
>
> The Court: I am limiting it to felonies" (D. App. 79a).

The court then refused to admit Bellamy's 17 misdemeanor convictions. As to petitioner's one conviction later in the case:

> "Mr. Harte: Now, Your Honor, we have argued this issue at length with respect to the witness Bellamy and it was Your Honor's ruling that only felonies be admitted to impeach the witness on the defendant's credibility.
>
> Now, Your Honor, we are advised that the defendant, back in the middle 1940's, was convicted of a misdemeanor in New York.
>
> The Court: Involving moral turpitude or not? (D. App. 103a).

The court then admitted petitioner's one conviction. There is no question that the trial court applied a double standard.

The Government now seeks to defend these startlingly contradictory rulings by alleging Bellamy's convictions did not involve "moral turpitude." The trial court did not so hold, nor was this an issue until raised by the Government for the first time in its answering brief in the Court of Appeals. And this, contrary to every current authoritative statement on the matter.

The Government baldly states that convictions for running an organized numbers racket are not offenses "characterized by moral turpitude." Support for this statement are (1) 1907 Alabama case involving crap shooting which does not mention moral turpitude [and Alabama did not recognize the impeachment rule at the time—see *Gordon* v. *State,* 140 Ala. 29, 39 So. 1009, 1012 (1904)]; (2) an 1895 Missouri case which did not mention moral turpitude [and Missouri permitted impeachment for felonies only, *State* v. *Smith,* 125 Mo. 2, 7 (1894]; (3) and two other early cases which did not involve impeachment at all, the first involving alien deportation and the second a replevin action. None in any event involved numbers. Arrayed against these "authorities" are petitioner's pages of citations (App. F, 37a-54a).

The Government next looks to the "commonly accepted" definition of moral turpitude. We accept the definition although it is the most extreme listed. But the Government must also accept that the definition is attuned to public morals and as such must conform to and be "consonant with, the state of public morals [and] never can remain stationary, but it may vary according to the community or the times." Thus, a violation of the National Prohibition Act was held to involve moral turpitude in 1926 [*In re Bartos,* 13 F. 2d 138, 143 (1926)] although few would dispute taking a drink does now.

Every authority condemns the numbers racket in the strongest possible language, except the Government now, in its brief, for purposes of this case. Principle should not give way to expediency.

4. Inspection of Grand Jury Minutes.

The Government insists that *Pittsburgh Plate Glass Co.* v. *United States,* 360 U.S. 395, 401, gives it the benefit of the grand jury minutes but precludes a defendant's use of minutes at trial. His remedy is said solely to be a request of the trial judge to inspect the minutes.

Petitioner submits that if the Government is correct, then *Pittsburgh Plate Glass* should be re-examined to provide a defendant with at least equal knowledge of his accuser's prior statements.

Respectfully submitted,

C. Allen High
Edward B. Henslee Jr.
Francis H. Monek
William J. Harte
Counsel for Petitioner